

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

In re: PHARMACEUTICAL INDUSTRY)	
AVERAGE WHOLESale PRICE)	
LITIGATION)	MDL No. 1456
_____)	Civil Action No. 01-12257-PBS
)	
THIS DOCUMENT RELATES TO:)	Hon. Patti B. Saris
)	
<i>United States of America ex rel. Ven-a-Care of</i>)	
<i>the Florida Keys, Inc., et al. v. Boehringer</i>)	
<i>Ingelheim Corp., et al., Civil Action No. 07-</i>)	
10248-PBS)	

PLAINTIFF’S MOTION TO COMPEL TESTIMONY

Plaintiffs United States of America and Relator Ven-a-Care of the Florida Keys, Inc. hereby move to compel Defendants Roxane Laboratories, Inc., n/k/a Boehringer Ingelheim Roxane, Inc., Roxane Laboratories, Inc., Boehringer Ingelheim Corporation and Boehringer Ingelheim Pharmaceuticals, Inc., (collectively “Roxane”), to provide the deposition testimony outlined below. As set forth more fully in the accompanying Memorandum, Roxane has improperly refused to provide testimony on behalf of Boehringer Ingelheim Corporation (“BIC”), and Boehringer Ingelheim Pharmaceuticals, Inc. (“BIPI”); instructed a witness at a 30(b)(6) deposition not to answer certain questions; and, after ignoring for five weeks plaintiffs request for dates to depose a certain witness, provided but a single date (the second-to-last day of the discovery period), asked plaintiffs on the eve of the deposition to cancel the deposition because the witness is seriously ill (when it was too late for plaintiffs to notice an alternate witness), and now refuses to provide a “substitute” witness for deposition.

WHEREFORE plaintiffs ask that this Motion be granted and that the Court order Roxane to:

1) provide a 30(b)(6) witness from BIC and BIPI to answer questions listed on plaintiffs list of designated topics, including about lobbying;

2) reconvene the Rule 30(b)(6) deposition of Roxane Laboratories and allow the United States to complete its questioning about the NovaPlus products which the Court permitted plaintiffs, on November 25, 2008, to add to the Complaint, and about which Roxane improperly instructed its 30(b)(6) witness not to answer; and

3) make available for deposition the witness requested by plaintiffs to testify on sales/marketing issues, in substitution for the witness whose deposition was cancelled at Roxane's request due to the witness's illness.

Respectfully submitted,

For the United States of America,

For the relator, Ven-A-Care of the Florida Keys, Inc.,

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LOCAL RULE 7.1 CERTIFICATION

The undersigned counsel certifies pursuant to Local Rule 7.1(a)(2) that counsel for the United States conferred with counsel for the defendants in a good faith attempt to resolve or narrow the issues raised in this Motion.

/s/ James J. Fauci

James J. Fauci

Assistant United States Attorneys

Dated: February 13, 2009

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing was delivered to all counsel of record by electronic service pursuant to Paragraph 11 of Case Management Order No. 2, by sending on February 13, 2009, a copy to LexisNexis File and Serve for posting and notification to all parties.

/s/ James J. Fauci

James J. Fauci

Assistant United States Attorneys

Dated: February 13, 2009